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Attorneys for Plaintiffs Susanne Stone Marshall, Adele Fox, Marsha Peshkin, and Russell Oasis, individually and on behalf of a class of similarly situated Plaintiffs

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

SUSANNE STONE MARSHALL, ADELE FOX,
MARSHA PESHKIN, and RUSSELL OASIS,

Plaintiffs,

v.

CAPITAL GROWTH COMPANY; DECISIONS,
INC.; FAVORITE FUNDS; JA PRIMARY LIMITED
PARTNERSHIP; JA SPECIAL LIMITED
PARTNERSHIP; JAB PARTNERSHIP; JEMW

Adv. Pro. No. 08-1789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 15-01293 (SMB)

Appeal No.: 17-cv-02230

PARTNERSHIP; JF PARTNERSHIP; JFM INVESTMENT COMPANIES; JLN PARTNERSHIP; JMP LIMITED PARTNERSHIP; JEFFRY M. PICOWER SPECIAL COMPANY; JEFFRY M. PICOWER, P.C.; THE PICOWER FOUNDATION; THE PICOWER INSTITUTE OF MEDICAL RESEARCH; THE TRUST F/B/O GABRIELLE H. PICOWER; BARBARA PICOWER, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower; and IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,

Defendants.

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Pursuant to Federal Rules of Bankruptcy Procedure 8009, and in connection with the Notice of Appeal filed on March 20, 2017, Plaintiffs Susanne Stone Marshall, Adele Fox, Marsha Peshkin and Russell Oasis, (“Plaintiffs” or the “Fox Parties”) (ECF No. 50), hereby designate the items to be included in the record on appeal and state the issues to be presented on appeal to the United States District Court for the Southern District of New York from the:

(1) Memorandum Decision Denying Motion for Declaratory Judgment and Dismissing Complaint of the United States Bankruptcy Court for the Southern District of New York (Hon. Stuart M. Bernstein) (the “Bankruptcy Court”) entered in the above-referenced proceeding on March 7, 2017 (Doc. No. 49) (the “Decision”).

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

1. In light of the District Court’s decision in *Fox v Picard*, 14 Civ. 6790 (JGK) (SDNY May 11, 2015) that “a creditor’s claim may be non-derivative if ‘some direct legal obligation flowed from the defendants to the creditor’ and that a Section 20(a) claim provides that direct

obligation” Sl. Op. at 15, did the Bankruptcy Court err in denying Plaintiffs’ motion for declaratory relief, and in finding the proposed amended Section 20(a) complaint proffered by Plaintiffs was derivative of the Trustee's claims and therefore barred by the permanent injunction previously entered in this matter?

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

FILING DATE	ECF NO.	DOCKET TEXT
08/29/2015	1	Complaint against Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffrey M. Picower Special Company, Jeffrey M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower, Barbara Picower, individually, and as Executor of the Estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC . Nature(s) of Suit: (91 (Declaratory judgment)) Filed by Helen Chaitman on behalf of Susanne Stone Marshall, Adele Fox, Marsha Peshkin, Russell Oasis. (Attachments: # 1 Exhibit 1 3d Amended Complaint # 2 Exhibit 1 3d Amended Complaint EX A Transcript) (Chaitman, Helen) (Entered: 08/29/2015)
08/31/2015	2	Summons with Notice of PreTrial Conference issued by Clerk's Office with PreTrial Conference set for 10/6/2015 at 10:00 AM at Courtroom 723 (SMB), Answer due by 9/30/2015, (Braithwaite, Kenishia) (Entered: 08/31/2015)
09/30/2015	15	Disclosure Statement filed by Marcy R. Harris on behalf of Barbara Picower, individually, and as Executor of the Estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffrey M. Picower Special Company, Jeffrey M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower. (Harris, Marcy) (Entered: 09/30/2015)
10/05/2015	16	So Ordered Stipulation as to Briefing Schedule and Responding to the Complaint for Declaratory Judgment signed on 9/29/2015 (White, Greg) (Entered: 10/05/2015)

11/09/2015	17	Notice of Agenda <i>Notice of Motion</i> Filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Chaitman, Helen) (Entered: 11/09/2015)
11/09/2015	18	Memorandum of Law <i>In Support of Motion for Declaratory Judgment</i> filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Chaitman, Helen) (Entered: 11/09/2015)
11/09/2015	19	<i>Declaration of Helen Davis Chaitman In Support of Plaintiffs' Motion for Declaratory Judgment</i> filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit) (Chaitman, Helen) (Entered: 11/09/2015)
12/18/2015	23	Memorandum of Law <i>in Opposition to The Fox Plaintiffs' Motion for Declaratory Judgment 17</i> filed by Marcy R. Harris on behalf of Barbara Picower, individually, and as Executor of the Estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffrey M. Picower Special Company, Jeffrey M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower. (Harris, Marcy) (Entered: 12/18/2015)
12/18/2015	24	<i>Affirmation of Marcy R. Harris Esq. in Support of The Picower Parties' Memorandum of Law 17</i> filed by Marcy R. Harris on behalf of Barbara Picower, individually, and as Executor of the Estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffrey M. Picower Special Company, Jeffrey M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Harris, Marcy) (Entered: 12/18/2015)
12/18/2015	25	<i>Opposition/Trustee's Memorandum of Law in Opposition to Motion for Declaratory Judgment</i> filed by David J. Sheehan on behalf of IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 12/18/2015)
12/18/2015	26	<i>Declaration of Keith R. Murphy in Opposition to Fox Plaintiffs' Motion for Declaratory Judgment</i> (related document(s)25) filed by David J. Sheehan on behalf of IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC.

		(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q) (Sheehan, David) (Entered: 12/18/2015)
12/18/2015	27	<i>Affidavit of Vineet Sehgal in Opposition to Fox Plaintiffs' Motion for Declaratory Judgment</i> (related document(s)26, 25) filed by David J. Sheehan on behalf of IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R) (Sheehan, David) (Entered: 12/18/2015)
12/18/2015	28	Affidavit of Service (related document(s)26, 25, 27) Filed by David J. Sheehan on behalf of IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 12/18/2015)
12/21/2015	29	<i>Affidavit of Service of 1) The Picower Parties Memorandum of Law In Opposition to the Fox Plaintiffs Motion for Declaratory Judgment and 2) Affirmation of Marcy R. Harris, Esq. in Support of the Picower Parties Memorandum of Law [23, 24]</i> Filed by Marcy R. Harris on behalf of Barbara Picower, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Special Company, Jeffry M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower. (Harris, Marcy) (Entered: 12/21/2015)
01/14/2016	30	<i>Reply to Motion Plaintiffs' Reply Memorandum of Law in Further Support of Their Motion for a Declaratory Judgment</i> filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Chaitman, Helen) (Entered: 01/14/2016)
01/14/2016	31	<i>Declaration [17, 30] Reply Declaration of Helen Davis Chaitman in Further Support of Plaintiffs' Motion for Declaratory Judgment</i> filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) (Chaitman, Helen) (Entered: 01/14/2016)
01/28/2016	33	<i>Letter to Honorable Stuart M. Bernstein Regarding Reply Brief</i> (related document(s)30) Filed by Keith R. Murphy on behalf of IRVING H. PICARD, Trustee for the Liquidation of Bernard L.

		Madoff Investment Securities LLC. (Murphy, Keith) (Entered: 01/28/2016)
01/28/2016	34	Letter to Hon. Stuart M. Bernstein from Marcy Ressler Harris (related document(s)31) Filed by Marcy R. Harris on behalf of Barbara Picower, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Special Company, Jeffry M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower. (Harris, Marcy) (Entered: 01/28/2016)
01/29/2016	35	(THIS ENTRY HAS BEEN REFILED. SEE DOCUMENT #38 FOR THE CORRECT ENTRY) Notice of Motion to Set Hearing filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Chaitman, Helen) Modified on 2/1/2016 (Richards, Beverly). (Entered: 01/29/2016)
01/29/2016	36	Declaration Under Penalty of Perjury for Non-Individual Debtors (Official Form 202) Declaration of Helen Davis Chaitman In Support of Plaintiff's Motion to Strike Filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) (Chaitman, Helen) (Entered: 01/29/2016)
01/29/2016	37	Memorandum of Law In Support of Motion to Strike filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Chaitman, Helen) (Entered: 01/29/2016)
02/01/2016	38	Notice of Motion to Set Hearing filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Attachments: # 1 proposed Order to Show Cause)(Chaitman, Helen) (Entered: 02/01/2016)
02/01/2016	39	Order to Show Cause Signed On 2/1/2016. Re: Why An Order Should Not Be Entered Striking The Defendants Letter Submissions Of January 28, 2016, And Taking Judicial Notice Of The Madoff Declaration Filed In Sec. Inv. Prot. Corp. V. Bernard L. Madoff Inv. Secs. LLC, No. 08-1789 with hearing to be held on 2/11/2016 at 10:00 AM at Courtroom 723 (SMB) (Greene, Chantel) (Entered: 02/01/2016)
02/10/2016	41	Opposition/Trustee's Memorandum of Law in Opposition to Motion to Strike (related document(s)39, 37) filed by David J. Sheehan on behalf of IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 02/10/2016)

02/10/2016	42	Memorandum of Law <i>in Opposition to Motion to Strike</i> (related document(s)39, 37) filed by Marcy R. Harris on behalf of Barbara Picower, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Special Company, Jeffry M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower. (Harris, Marcy) (Entered: 02/10/2016)
02/18/2016	45	Transcript regarding Hearing Held on 2/11/2016 10:09AM RE: Motion to Determine Whether Complaint is Barred by Permanent Injunction; Motion to Strike SurReplies. Remote electronic access to the transcript is restricted until 5/18/2016. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Veritext Legal Solutions.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 2/25/2016. Statement of Redaction Request Due By 3/10/2016. Redacted Transcript Submission Due By 3/21/2016. Transcript access will be restricted through 5/18/2016. (Ortiz, Carmen) (Entered: 02/24/2016)
01/31/2017	48	Letter <i>to Judge Bernstein regarding ECF No. 46</i> Filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Chaitman, Helen) (Entered: 01/31/2017)
03/07/2017	49	Written Opinion Signed On 3/7/2017. Re: Memorandum Decision Denying Motion For Declaratory Judgment And Dismissing Complaint (related document(s)1, 18) (Barrett, Chantel) (Entered: 03/07/2017)
03/20/2017	50	Notice of Appeal <i>FROM THE DECISION OF JUDGE STUART M. BERNSTEIN DATED MARCH 7, 2017</i> filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. Appellant Designation due by 4/3/2017, (Attachments: # 1 Exhibit A) (Chaitman, Helen) (Entered: 03/20/2017)
03/20/2017	51	Civil Cover Sheet from U.S. Bankruptcy Court, Case Number: 1501293 Judge Stuart M. Bernstein (related document(s)50) filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Chaitman, Helen) (Entered: 03/20/2017)
03/20/2017	52	Notice of Settlement of an Order (related document(s)49) filed by Marcy R. Harris on behalf of Barbara Picower, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the

		Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Special Company, Jeffry M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust F/B/O Gabrielle H. Picower. Objections due by 3/24/2017, (Attachments: # 1 Exhibit Proposed Order)(Harris, Marcy) (Entered: 03/20/2017)
03/23/2017	54	Notice of Counter-Proposed Order <i>OBJECTION TO NOTICE OF SETTLEMENT OF ORDER AND COUNTER-PROPOSED ORDER</i> filed by Helen Davis Chaitman on behalf of Adele Fox, Susanne Stone Marshall, Russell Oasis, Marsha Peshkin. (Attachments: # 1 Exhibit 1)(Chaitman, Helen) (Entered: 03/23/2017)
		U.S. Bankruptcy Court Southern District of New York Adversary Proceeding #:15-01293-smb Docket

Dated: April 3, 2017
New York, New York

CHAITMAN LLP

By: /s/ Helen Davis Chaitman

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CERTIFICATE OF SERVICE

I, Sarah Howell, hereby certify that I caused a true and correct copy of the foregoing documents(s) to be served upon the parties in this action who receive electronic service through CM/ECF. I certify under penalty of perjury that the foregoing is true and correct.

Dated: April 3, 2017

/s/ Sarah A. Howell